IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4363 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISHWARBHAI @ ARVINDBHAI BACHUBHAI MODI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4363 of 2004

MR AR SHAIKH for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 15-03-2004. By

the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about one criminal case registered against the petitioner. The said case is registered as Gunah Register No.5147/2004 under the Bombay Prohibition Act. In the grounds of detention, the detaining authority has also relied upon the statement of two secret witnesses and the authority has claimed privilege under Section 9 (2) of the Act and, therefore, the names of those two witnesses have not been disclosed. The aforesaid order of detention is challenged by the petitioner on various grounds.

2) Learned advocate for the petitioner submitted that before claiming privilege under Section 9 (2) of the Act, the authority has not tried to verify about the credentials and character of the detenu. It is also submitted that the privilege is claimed in a routine manner and, therefore, without any basis the authority has tried to withhold the names of witnesses and as a result of that the petitioner is denied the valuable right of making effective representation. To substantiate his say, learned advocate for the petitioner has relied upon the decision of this Court rendered in the case of KISHOR NAGINBHAI PARMAR v. STATE OF GUJARAT, reported in 2000 (4) GLR 3236, wherein it is held that before claiming privilege under Section 9 (2) of the Act, proper exercise is required to be made for finding out antecedents of the detenu and there should be some credible material to justify the say that if the names of witnesses are disclosed it will be harmful to their life. Since in the instant case, said exercise has not been done, privilege claimed in this case is not genuine and proper.

3) Learned advocate for the petitioner submitted that there is only solitary case registered against the petitioner and considering the same, it cannot be said that the petitioner is a habitual offender. It is further submitted that considering the said case, it cannot be said that the petitioner has violated public order and at the most it can be said that law and order is violated by the petitioner. To substantiate his say, learned advocate for the petitioner has relied upon the judgement of this Court in Sandip Omprakash Gupta Vs. State of Gujarat and others, reported in 2004 (1) GLR 864, wherein this Court has observed that a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority relied on two other

unregistered offences based on statements of certain witnesses and, therefore, a learned Single Judge of this Court held, on facts, that the detenu could have been dealt with under the ordinary criminal law. The order of detention passed therein, treating the petitioner as a bootlegger, is set aside. Since I am bound by the view taken by the learned Single Judge, in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act, which can be taken care under the criminal law, this petition is required to be allowed.

4) In view of what is stated above, this petition is allowed. The order of detention dated 15-03-2004 is quashed and set aside. The detenu, Ishwarbhai alias Arvindbhai Bachubhai Modi is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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